

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rachel Buhner	Team: Squad #16	CCRB Case #: 201409378	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 08/27/2014 3:00 AM	Location of Incident: Parking lot behind 39 Lenox Road & 70th Precinct stationhouse	Precinct: 70	18 Mo. SOL 2/27/2016	EO SOL 2/27/2016	
Date/Time CV Reported Thu, 09/11/2014 2:27 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Thu, 09/11/2014 2:27 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Carl Pattelli	15304	944880	070 PCT
2. POM Elvis Alcivar	29226	937956	070 PCT
3. POM Max Rolffot	01669	949566	070 PCT
4. SGT Matthew Fried	1790	934884	070 PCT
5. Officers			070 PCT

Officer(s)	Allegation	Investigator Recommendation
A. Officers	Abuse: Officers stopped the car in which § 87(2)(b) was an occupant.	
B.POM Carl Pattelli	Abuse: PO Carl Pattelli frisked § 87(2)(b)	
C.POM Carl Pattelli	Abuse: PO Carl Pattelli searched § 87(2)(b)	
D.POM Elvis Alcivar	Abuse: PO Elvis Alcivar searched the car in which § 87(2)(b) was an occupant.	
E.POM Carl Pattelli	Abuse: PO Carl Pattelli searched the car in which § 87(2)(b) was an occupant.	
F.SGT Matthew Fried	Abuse: Sgt. Matthew Fried supervised the search of the car in which § 87(2)(b) was an occupant.	
G.POM Carl Pattelli	Abuse: PO Carl Pattelli strip-searched § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		

### Case Summary

On August 27, 2014, at approximately 12 a.m., § 87(2)(b) was sitting in a rental vehicle in a parking lot, located behind 39 Lenox Road in Brooklyn. § 87(2)(b)'s uncle, was the registered renter of the vehicle. § 87(2)(b) had a conversation via cell phone with his girlfriend, § 87(2)(b), and then fell asleep while still inside the vehicle. The engine was on, along with the radio and the air conditioning. § 87(2)(b) reclined one of the front seats, and after sleeping for approximately three hours, he was awoken by a banging on the door and a flashlight being shined inside.

Officers approached and instructed § 87(2)(b) to exit the vehicle (**Allegation A**). PO Pattelli allegedly patted § 87(2)(b)'s shoulders, back, torso, arms, waist, and legs (**Allegation B**), and allegedly entered § 87(2)(b)'s jacket and pants pockets, removing his wallet, keys, phone, lighter, and jewelry (**Allegation C**). PO Pattelli then asked § 87(2)(b) why he was sleeping in the car, and § 87(2)(b) explained that the car was registered to his uncle, and that he had permission to be inside. PO Pattelli and PO Alcivar also searched the inside of the vehicle, including opening the glove box (**Allegation D and Allegation E**). Sgt. Fried then allegedly opened the driver's side door, and searched the inside of the vehicle, as well as the trunk (**Allegation F**).

PO Pattelli then handcuffed § 87(2)(b) and he was transported to the 70<sup>th</sup> Precinct stationhouse. While inside the stationhouse, PO Pattelli allegedly grabbed the front of § 87(2)(b)'s boxers, pulling the waistband straight out away from his body, and appeared to look inside (**Allegation G**).

### Mediation, Civil and Criminal Histories

- § 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)
- As a result of his arrest, as well as the ongoing claim, this case was ineligible for mediation.
- § 87(2)(b), § 87(2)(a) 160.50  
§ 87(2)(b)

### Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) (encl.2F).
- Sgt. Fried has been a member of the NYPD for 10 years, has had 31 previous CCRB allegations involving 11 cases with no substantiated allegations. He has multiple allegations relevant to this case; three frisk allegations, four allegations of a search of a person, two stop allegations, and two allegations of a vehicle search (encl. 2A-2B).
- This is the first CCRB complaint against PO Pattelli during his seven year tenure (encl. 2E).
- PO Alcivar has been a member of the NYPD for nine years, has had 22 previous CCRB allegations involving 11 cases with no substantiated allegations. He has multiple allegations relevant to this case; including one allegation of a search of a person, one frisk allegation, one vehicle stop allegation, and one vehicle search allegation (encl. 2G-2H).

### Potential Issues

- Although § 87(2)(b) alleged that only two officers initially stopped him, PO Pattelli, PO Alcivar, and PO Rolffot all claim to have originally stopped § 87(2)(b). PO Alcivar and PO Rolffot were partners, allege that they smelled marijuana emanating from § 87(2)(b)'s car, as well as observed it idling, and made the determination to stop it. After speaking with § 87(2)(b) they called for Sgt. Fried, who was partnered with PO Pattelli.

- According to PO Pattelli's statement, he and Sgt. Fried made the initial stop of § 87(2)(b) and PO Alcivar and PO Rolffot arrived on scene after § 87(2)(b) was already in handcuffs. Sgt. Fried does not recall when he arrived at the location.
- Similarly, § 87(2)(b) alleged that only one officer, Sgt. Fried, searched his vehicle. Sgt. Fried denied this; however, both PO Alcivar and PO Pattelli claim to have searched the vehicle, and both admitted to entering the glove compartment.
- In his statement, § 87(2)(b) could not recall if PO Pattelli or Sgt. Fried allegedly committed the strip search. However, in his testimony, PO Pattelli admits to conducting the search of § 87(2)(b) at the stationhouse; therefore, the strip search allegation is being pled against PO Pattelli.

### Civilian Statements Complainants/Victims

#### § 87(2)(b) (encl. 3G-3H)

- § 87(2)(b)
- § 87(2)(b) was sitting in a vehicle rented by his uncle, § 87(2)(b). The car was idling, and the radio and air conditioning were on. He could not recall if he was seated in the front driver or front passenger seat.
- § 87(2)(b) reclined the seat and fell asleep. At approximately 3am, he awoke to PO Pattelli banging on the door and shining a flashlight inside the window.
- PO Pattelli instructed § 87(2)(b) to exit the vehicle, and he complied. PO Pattelli frisked and searched § 87(2)(b) and removed objects from his pockets.
- Sgt. Fried entered and searched the vehicle. He searched the lungeable area, as well as opened the glove box and reviewed the rental paperwork. He also went inside the center console. He then opened the trunk and searched inside. § 87(2)(b) did not observe him remove any objects, or see any other officers enter the vehicle.
- § 87(2)(b) heard his name over the radio for a warrant check, which was negative. However, § 87(2)(b) did note that he did not have a license at the time. He was then placed in handcuffs and transported to the 70<sup>th</sup> Precinct stationhouse.
- § 87(2)(b), § 87(2)(a) CVR § 50-b

### NYPD Statements

#### Subject Officer: PO Carl Pattelli (encl. 4A-4G)

- At approximately 4:10am, PO Pattelli and Sgt. Fried observed an idling vehicle with its exterior lights on in an "open, abandoned lot". The lot is known to be a high crime area.
- The officers exited their patrol car, and PO Pattelli stated that he approached the car, "to make sure he's not doing drugs...just to have a conversation". He also articulated that he did not have any specific reasons to believe § 87(2)(b) was using drugs, but that it is a common occurrence at the location. PO Pattelli did not smell an odor of marijuana emanating from the vehicle. § 87(2)(b)'s eyes were closed, and he appeared to be sleeping.
- PO Pattelli asked § 87(2)(b) for his license and registration. § 87(2)(b) then mentioned that the car was a rental, and that his uncle was listed on the rental agreement. PO Pattelli asked if § 87(2)(b) had a license, and he replied that he did not. He provided PO Pattelli with a current learner's permit.

- PO Pattelli ran § 87(2)(b)'s name and found that he had a suspended license. He returned to the vehicle and asked § 87(2)(b) to step out. He immediately frisked and handcuffed him, as well as searched his pockets.
- Because the car had to be taken to the stationhouse, PO Pattelli searched it. He entered all four doors and searched under the seats and in the glove compartment. He did not open the trunk, and could not recall if Sgt. Fried also searched the vehicle. PO Pattelli did not state why the glove compartment was searched, but indicated that the vehicle search was done in the interest of officer safety. § 87(2)(b) was either inside the patrol car at the time of the search, or standing near it.
- Two additional officers arrived on scene, PO Rolffot and PO Alcivar. PO Pattelli could not recall how they were requested to arrive, but stated that they did so towards the end of the incident. PO Pattelli could not recall if either officer searched § 87(2)(b)'s vehicle; however, he believed they drove § 87(2)(b)'s vehicle to the stationhouse.
- PO Pattelli searched § 87(2)(b) prior to lodging him in the cells. When asked if he pulled the waistband of § 87(2)(b)'s boxers and looked inside, he stated that he could not say for sure, but that he may have. He stated that if a prisoner is wearing two pairs of pants, he would "have them take the outer layer of pants off to make sure nothing is in the pockets of the inner pants", and that he would, "...feel around the waistband, kind of shake loose anything that might be in the waistband or maybe taped..." However, PO Pattelli clarified that he did not recall if § 87(2)(b) was wearing two pairs of pants, and that he was speaking generally. PO Pattelli admitted to feeling around the waistband and that he shook it loose to make sure there was no contraband, though he insisted that he did not strip search § 87(2)(b).

**Subject Officer: Sgt. Matthew Fried (encl. 4U-4AA)**

- Sgt. Fried testified that he did not have an independent recollection of the incident. However, after being provided a brief description of the incident, he recalled some of the details.
- He stated that officers summoned him to the location to verify an arrest, and once he arrived, he was apprised of the situation. Sgt. Fried could not recall specifics of when he arrived on scene, but did remember § 87(2)(b) having a suspended license, and that he was not on the rental agreement. He could not recall if § 87(2)(b) was already placed in handcuffs when he arrived. He also did not recall what PO Pattelli was doing while on scene, or if he interacted with § 87(2)(b). Sgt. Fried did not smell an odor of marijuana emanating from the vehicle.
- When asked if he spoke with § 87(2)(b) at all, Sgt. Fried responded that it was possible, but that he did not recall having a conversation with him. He did not recall if he saw § 87(2)(b) being frisked, and he did not do so himself. He also did not recall observing § 87(2)(b) being searched, and stated he did not do so himself.
- Sgt. Fried did not search § 87(2)(b)'s vehicle, and did not recall witnessing the car being searched by any other officers. However, he also stated that the car would have been searched incident to the arrest, even though he did not recall seeing it or doing it himself. He did not open the trunk, and did not observe any officer do so.
- He did not know who transported § 87(2)(b) to the stationhouse, and when asked if he observed § 87(2)(b) at the stationhouse, he stated he did not have an independent recollection of doing so. However, when presented the command log entry pertaining to § 87(2)(b)'s arrest, he confirmed that he wrote it.
- Sgt. Fried did not grab and pull the waistband of § 87(2)(b)'s boxers and look inside, nor did he observe any other officer do so.

**Subject Officer: PO Elvis Alcivar (encl. 4H-4M)**

- PO Alcivar and his partner, PO Rolffot, were patrolling in their vehicle when they noticed an idling car in a parking lot at 39 Lenox Road. The brake lights were on, and smoke was emanating from the tailpipe. They did not stop the vehicle at this time.
- Approximately an hour later, the officers returned and saw the same vehicle, still idling, in the same position as before. PO Alcivar could not determine if there was an individual inside, and approached the car to “make sure everything was OK”.
- When he was approximately eight feet away, he smelled a strong odor of marijuana emanating from the vehicle.
- PO Alcivar approached the driver’s window and saw § 87(2)(b) in the driver’s seat. The seat was reclined, and PO Alcivar knocked on the window multiple times and shined his flashlight inside. As a result, § 87(2)(b) awoke and rolled down the window. When he did so, the odor of marijuana increased.
- PO Alcivar asked § 87(2)(b) for his license, insurance and registration. § 87(2)(b) did not immediately comply, and asked why he wanted the documents. § 87(2)(b) searched for them, and while he was doing so, PO Alcivar requested that Sgt. Fried and PO Pattelli come to the scene. They arrived approximately three minutes later, while § 87(2)(b) was still in the vehicle.
- PO Alcivar asked § 87(2)(b) to exit the vehicle, and he complied. He ran § 87(2)(b)’s name, and while he did so, PO Pattelli frisked § 87(2)(b). However, he did not search him at that time. PO Alcivar stated that § 87(2)(b) was frisked for their safety, in order to ensure he did not have any weapons. However, he admitted that he did not have any specific reason to believe § 87(2)(b) was armed.
- PO Alcivar determined by running § 87(2)(b)’s permit that he had a suspended license. He informed PO Pattelli of this, and PO Pattelli placed § 87(2)(b) under arrest and searched him.
- PO Alcivar and PO Rolffot entered the vehicle, and PO Alcivar searched the lungeable area of the driver’s seat, as well as opened the glove compartment and underneath and around the front seats. He did not open the center console, and the trunk was not opened. PO Alcivar did not state why the glove compartment was searched, and did not state that it was in connection to the smell of marijuana.
- Although he could still smell the odor of marijuana, PO Alcivar could not recall if he made any attempts to locate its source within the vehicle.
- PO Rolffot transported § 87(2)(b)’s vehicle back to the stationhouse, and PO Pattelli and Sgt. Fried transported § 87(2)(b). PO Alcivar never interacted with § 87(2)(b) at the stationhouse, and was not present when he was lodged. He did not know if he was strip searched, and did not do so himself.

**Subject Officer: PO Max Rolffot (encl. 4N-4T)**

- PO Rolffot corroborated PO Alcivar’s statement regarding first observing the vehicle idling, then returning later and it still being present in the same state. However, he testified that he observed a male seated in the driver’s seat.
- He also corroborated that he smelled marijuana; however, he stated that he could smell it from the patrol car, and that he was unsure if PO Alcivar smelled it as well. He also only deduced that the smell was emanating from § 87(2)(b)’s vehicle due to the fact that there was no one else in the vicinity.
- PO Rolffot also confirmed that he and PO Alcivar approached the vehicle to make sure that everything was OK, in both the car and the area as a whole.
- PO Rolffot could not recall which side of the car he approached. He observed § 87(2)(b) in the driver’s seat, and noted that his eyes were closed. He could still smell the odor of marijuana.

- The officers asked for § 87(2)(b)'s license and registration, and § 87(2)(b) refused. PO Rolffot never obtained his license, but knew that eventually an officer did. He did not recall if he asked § 87(2)(b) to exit the vehicle.
- PO Rolffot then contacted Sgt. Fried and PO Pattelli and requested that they respond. He could not recall how long until they arrived, or if § 87(2)(b) was inside or outside of the vehicle when they responded. Sgt. Fried and PO Pattelli spoke to § 87(2)(b) but he could not recall their conversation, or if § 87(2)(b) was inside or outside of the vehicle.
- After § 87(2)(b) exited the vehicle, PO Rolffot could smell marijuana on his clothes. He could not recall if § 87(2)(b) was ever frisked, or if he did so himself.
- PO Rolffot confirmed that the glove box was opened at some point during the incident, but stated he did not open it himself. He stated that officers may have opened it to get the documents that § 87(2)(b) refused to provide, but could not say with certainty.
- § 87(2)(b) was eventually placed under arrest and his person was searched. He was not searched before being placed under arrest. PO Rolffot believed § 87(2)(b) was arrested for unauthorized use of a vehicle.
- PO Rolffot transported § 87(2)(b)'s vehicle to the stationhouse. He could not recall if any other officer entered the vehicle, and could not recall if the trunk of the vehicle was opened. Once inside the vehicle, he searched in the immediate area of the driver's seat. He did not open the center console, and he could not recall if marijuana was ever found, though he did note observing spent tobacco leaves and white cigarette papers on the floor.
- PO Rolffot did not search § 87(2)(b) at the stationhouse, but did observe the search. He stated that § 87(2)(b) was told to remove his jacket and hat, but could not describe the search further. He could not recall which officer searched § 87(2)(b) though he stated that he did not observe an officer pull out on § 87(2)(b)'s waistband, and that § 87(2)(b) was not strip searched.

## **Finding and Recommendations**

### **Explanation of Subject Officer Identification**

§ 87(2)(b) provided descriptions for three of the four officers who were present at the incident location. In his initial complaint, § 87(2)(b) named PO Pattelli as the officer who initially stopped him. PO Pattelli was listed as § 87(2)(b)'s arresting officer, and his partner was Sgt. Fried. Furthermore, PO Alcivar noted in his memo book that he stopped § 87(2)(b) and his partner that date was PO Rolffot. Only Sgt. Fried did not have an independent recollection of interacting with § 87(2)(b) on the incident date.

### **Allegation not pleaded**

**Abuse of Authority** – § 87(2)(b) alleged that Sgt. Fried participated in the vehicle search; however, officer testimony confirmed that he did not. However, officer testimony also confirms that Sgt. Fried was present for the vehicle search and as a supervisor was responsible for the completion of the search as well. Consequently, a vehicle search allegation is not pleaded against Sgt. Fried; however, an abuse allegation is pleaded against him for supervising the search of the § 87(2)(b)'s vehicle.

### **Recommendations**

#### **Allegation A—Officers stopped a vehicle in which § 87(2)(b) was an occupant.**

It is undisputed that the vehicle in which § 87(2)(b) was an occupant was stopped by officers. However, it remains in dispute which officers made this initial stop, and for what reasons the stop was conducted.

§ 87(2)(b) alleged that PO Pattelli and Sgt. Fried initially stopped him; however, multiple officers claim

to have made the stop of the vehicle. PO Pattelli stated that it was himself and Sgt. Fried, whereas Sgt. Fried corroborated the testimonies of PO Rolffot and PO Alcivar, who stated that they made the initial stop. Nevertheless, it is undisputed that the vehicle was stopped, and § 87(2)(b) was subsequently arrested.

According to NYC Administrative Code 24-163 § (encl.1A-1B), “No person shall cause or permit the engine of a motor vehicle, other than a legally authorized emergency motor vehicle, to idle for longer than three minutes”.

It is undisputed that § 87(2)(b) was the occupant in a vehicle that was idling for over three minutes. According to his own testimony, the car was idling for at least a few hours, and this assertion is corroborated by PO Pattelli, PO Alcivar, and PO Rolffot. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation B—PO Carl Pattelli frisked § 87(2)(b)**

It is undisputed that PO Pattelli frisked § 87(2)(b) however, the circumstances under which the frisk occurred remains in dispute.

According to his testimony, § 87(2)(b) alleged that after he was instructed to exit the vehicle, PO Pattelli patted his shoulders, back, torso, arms, waist, and legs. This statement is corroborated by PO Alcivar, who stated that PO Pattelli frisked § 87(2)(b) for their safety, while PO Alcivar ran § 87(2)(b) s license. When asked if he had any reason to suspect that § 87(2)(b) might be armed, PO Alcivar replied, “You never know. Anybody could have a weapon nowadays”. He also stated that he did not have a specific reason to believe § 87(2)(b) was armed.

PO Pattelli denied that he frisked § 87(2)(b) prior to the determination that he was placed under arrest. PO Pattelli stated that he ran § 87(2)(b) s license, and he was the officer who discovered that it was suspended. Upon this finding, PO Pattelli returned to § 87(2)(b) s vehicle, opened the door, and asked him to step out. He immediately frisked and handcuffed § 87(2)(b). He could not recall if he frisked or handcuffed him first, and his pockets were searched prior to placing him in the police vehicle.

An officer is authorized to frisk an individual only if the officer reasonably suspects the individual threatens physical injury to the officer by virtue of being armed. *People v. DeBour*, 40 N.Y. 2d 210 (1976) (encl. 1J-1T). The officer’s fear for his safety cannot be based on a general inclination; it must be articulable and specific. *People v. Barreto*, 161 AD2d 305 (1st Dept. 1990) (encl.1U-1W). Additionally, an officer cannot base his suspicion of a person on the reputation of a location. *People v. Marine*, 142 AD2d 368 (1st Dept. 1989) (encl. 1X-1Z).

Although PO Pattelli denied frisking § 87(2)(b) prior to his arrest, PO Alcivar testified that he observed PO Pattelli do so while he ran § 87(2)(b) s name, which was prior to determining that he had a suspended license and prior to him being under arrest. As is stated above, PO Alcivar acknowledged in his testimony that he did not have any articulable reason to believe that § 87(2)(b) had any weapons on his person. However, he did note, along with the other officers, that the lot where § 87(2)(b) was parked is a known high crime area, which raised their suspicion.

PO Pattelli described the lot as a location where people drink and use drugs, as well as stated that there was both a rape and a police-involved shooting in the lot within the past year. However, as was determined by *People v. Marine*, the reputation of a location alone is not justification for a frisk of an individual who is present at the time. Furthermore, when PO Pattelli asked § 87(2)(b) why he was in the vehicle, § 87(2)(b) replied that he was “just sitting there”. PO Pattelli then stated that this response raised his suspicions; however, as was found in *People v. Barreto*, a frisk is not justified based on a general feeling of discomfort of an officer, and the fear for an officer’s safety must be “articulable and specific”, which PO Pattelli was unable to do.

§ 87(2)(b), § 87(2)(g)

**Allegation C—PO Carl Pattelli searched § 87(2)(b)**

It remains in dispute if PO Pattelli searched § 87(2)(b) prior to his arrest.

§ 87(2)(b) alleged that after he was frisked, PO Pattelli entered his jacket and pants pockets and removed his wallet, keys, phone, lighter, and jewelry. While PO Pattelli does admit to searching § 87(2)(b) he testified that the search was conducted after § 87(2)(b) was placed under arrest. Although PO Alcivar stated that PO Pattelli did frisk § 87(2)(b) prior to his arrest, he specifically stated that he was not searched by PO Pattelli after he was frisked. No other officer on scene testified to PO Pattelli searching § 87(2)(b) prior to his arrest.

§ 87(2)(b), § 87(2)(g)

**Allegation D—PO Carl Pattelli searched the vehicle in which § 87(2)(b) was an occupant.**

**Allegation E – PO Elvis Alcivar searched the vehicle in which § 87(2)(b) was an occupant.**

It is undisputed that the vehicle in which § 87(2)(b) was an occupant was searched. Based on their own testimonies, both PO Pattelli and PO Alcivar admitted to searching § 87(2)(b) s vehicle.

§ 87(2)(b) did not clarify where specifically he was located during the vehicle search; however, he was outside his vehicle and ostensibly close enough to observe the actions taken by the officers, as he described them in detail during his sworn statement.

According to PO Pattelli’s statement, because the vehicle did not belong to § 87(2)(b) it could not be left on scene and would need to either be vouchered as arrest evidence or determine what Hertz wanted the officers to do with it. Due to the fact that the vehicle had to be transported to the stationhouse, PO Pattelli entered the car via all four doors and searched under the seats, as well as opened the glove compartment. However, he stated that the trunk was not opened on scene. He could not recall if Sgt. Fried also searched the vehicle.

PO Alcivar testified that while PO Pattelli was placing § 87(2)(b) under arrest, he and PO Rolffot entered § 87(2)(b) s vehicle. PO Alcivar searched the lungeable area from the driver’s seat, as well as opened the glove compartment and looked underneath and around the front seats. He stated he did not



open the center console, and that the trunk was not opened on scene. When asked why this search was conducted, he replied, “We wanted to make sure there was no contraband, or a bomb, inside the vehicle”. PO Alcivar still smelled the odor of marijuana, but he could not recall if he made any attempts to locate its source in the vehicle. PO Rolffot then transported § 87(2)(b) s vehicle to the stationhouse.

In his statement, PO Rolffot corroborated that the glove compartment was opened at one point, but stated that it was either opened in order to obtain the rental paperwork, or that § 87(2)(b) opened it himself. PO Rolffot stated he did not open it. He entered the vehicle, and searched the immediate area of the driver’s seat. He never opened the center console, and could not recall if marijuana was ever found, nor could he recall if he ever made any attempt to locate the source of the odor. He could not recall if any other officers entered the vehicle on scene. He confirmed that he transported the vehicle to the stationhouse.

Officers may conduct a limited search of a vehicle when there is a substantial likelihood of a weapon being present in the vehicle, thereby posing an articulable and specific threat to the officers’ safety, or if there is probably cause to believe that the vehicle contains contraband or evidence of a crime. *People v. Newman*, 96 AD3d 34 (1<sup>st</sup> Dept. 2012) (encl. 1C-1H).

Furthermore, as was decided in *People v. Galak*, in order to establish the validity of an inventory search, “two elements must be examined: first, the relationship between the search procedure adopted and the governmental objectives that justify the instruction, and, second, the adequacy of the controls on the officer’s discretion” *People v. Galak*, 80 N.Y.2d (1993) (encl. 1FF).

As is cited in *People v. Gomez*, in which a vehicle search was conducted after Victor Gomez was arrested for driving with a suspended license, “An inventory search is...designed to properly catalogue the contents of the item searched...an inventory search must not be a ruse for a general rummaging...” *People v. Gomez*, 13 N.Y.3d 6 (2009) (encl. 1DD-1GG).

Due to the fact that the vehicle was transported to the stationhouse by an officer, a cursory search of the lungable area is permissible in the interest of officer safety. However, entering the glove compartment, as both PO Alcivar and PO Pattelli admitted to doing, rises to the level of a vehicle search. As such, a specific or detailed reason for a vehicle search is required, as was established in *People v. Newman*. Although PO Alcivar and PO Rolffot initially stated that they smelled the odor of marijuana emanating from the vehicle, and that it increased in strength as they neared the vehicle, their decision to not take any action to determine if § 87(2)(b) was in possession of marijuana or question § 87(2)(b) in regards to the alleged odor casts further doubt on the officers’ original suspicion that marijuana could be smelled from § 87(2)(b) s car, and furthermore, strengthens the argument that the vehicle search that was conducted was unrelated to the alleged smell of marijuana, and that the glove compartment was not opened in order to search for marijuana.

§ 87(2)(g)

**Allegation F – Sgt. Matthew Fried supervised the search of the vehicle in which § 87(2)(b) was an occupant.**

It remains in dispute if Sgt. Fried searched § 87(2)(b) s vehicle.

§ 87(2)(b) testified that after he was instructed to exit the car, Sgt. Fried entered and searched the vehicle. He began by opening the driver’s door and looking under the seat, behind the steering wheel, in

the center console, and in the sun flaps. He then went to the passenger side and looked under the seat and in the glove compartment. Sgt. Fried then went into the backseat and looked inside the flip-down center console, and then exited the vehicle and opened the trunk and searched inside. § 87(2)(b) did not see Sgt. Fried remove anything from the vehicle, and never saw any other officer enter or search the vehicle.

Sgt. Fried testified that he did not have an independent recollection of witnessing the vehicle being searched by any officer, and that he did not conduct a search himself. However, he also stated that he wanted it to be noted that while he did not independently recall seeing or performing a vehicle search, that due to the circumstances and § 87(2)(b)'s arrest, the car would have had to be searched and that it would have been a search incident to a lawful arrest. He did not recall opening the trunk and looking inside, nor did he recall observing any officers doing so. However, he again reiterated that the search was a "lawful and proper" one, and that although he could not say who conducted it, he was sure it happened.

PO Pattelli and PO Alcivar admitted to being the officers that searched § 87(2)(b)'s vehicle and indicated that Sgt. Fried did not actively participate in the search. § 87(2)(b), § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation G – PO Carl Pattelli strip searched § 87(2)(b) inside the 70<sup>th</sup> Precinct stationhouse.**  
It remains in dispute if PO Pattelli strip searched § 87(2)(b) when he was being processed at the stationhouse.

§ 87(2)(b), § 87(2)(a) CVR § 50-b

§ 87(2)(b), § 87(2)(a) CVR § 50-b

§ 87(2)(b), § 87(2)(a) CVR § 50-b

In his testimony, PO Pattelli stated that he conducted the search of § 87(2)(b) while inside the stationhouse. § 87(2)(b), § 87(2)(a) CVR § 50-b

§ 87(2)(b), § 87(2)(a) CVR § 50-b PO Pattelli responded, "I can't say for sure. I may have to make sure nothing was in there. I really don't know if I actually looked". He went on to explain that as a procedure, when a prisoner is wearing two pairs of pants, it is necessary to "kind of feel around the waistband...so I have to feel around the waistband...kind of like shake loose the waistband". However, he clarified that he was speaking generally, and could not recall if § 87(2)(b) was wearing two pairs of pants. § 87(2)(b), § 87(2)(a) CVR § 50-b

§ 87(2)(b), § 87(2)(a) CVR § 50-b

PO Alcivar and PO Rolffot were not present when § 87(2)(b) was lodged in the cells, and Sgt. Fried did not have an independent recollection of interacting with § 87(2)(b) at the stationhouse. However, he did confirm that the relevant Command Log entry was written by him, and that he was present at the stationhouse when § 87(2)(b) was being processed. He stated he did not witness any officer strip search § 87(2)(b) and did not authorize any officer to do so.

According to Patrol Guide Procedure 208-05 (encl. 1HH-1JJ), a strip search is defined as, "...any search in which an individual's undergarments and/or private areas are exposed or in which an individual's clothing is removed, lifted up, or pulled down to expose undergarments or private areas".

In his testimony, PO Pattelli did not explicitly deny pulling the waistband of § 87(2)(b) s boxers away from his body. In fact, he implicitly admitted that the action occurred by stating that he did not recall if he "actually looked" inside § 87(2)(b) s boxers, therefore suggesting that he did pull the waistband outwards. § 87(2)(b), § 87(2)(g), § 87(2)(a) CVR § 50-b

§ 87(2)(g), § 87(4-b)

Team: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Date

Supervisor: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date